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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
087916.106	08/21/97	POHLMANN	R

STRIKER STRIKER & STENBY  
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MM41/0120

EXAMINER
NOLAND, T

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 01/20/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/916/06

Applicant(s)

Pohlman

Examiner

Tom Nolan

Group Art Unit

2856

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 8/21/97
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 24-49 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 24-49 are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4 filed 8/21/97
- ☐ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 2856

1. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2856.

2. The preliminary amendment filed August 21, 1997 has been entered

3. The numbering of claims is not accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 35-50 been renumbered as claims 35-49. Any new additional claim presentation should begin with claim 50. In line 1 of renumbered claims 36-37 and 39-49 the base claim number from which the claim depends has been reduced by one, e.g. in the claim renumbered as claim 36, in line thereof "claim 36" has been replaced with -- -- -- claim 35 -- -- .

4. The abstract amendment has been entered. Applicant's representation is reminded that bracketing out deletion and underlining additions should be used only when amending claims. 37 CFR 1.121.

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 24-37, drawn to an arrangement for determining penetration depth when putting in place supporting elements into a waterbed, classified in class 73, subclass 84.

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II. Claims 38-49, drawn to a method for determining a penetration depth when putting in place supporting elements into a water bed, classified in class 73, subclass 84.

6. The inventions are distinct, each from the other because:

Inventions Group 2 and Group 1 are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as use in determining penetration depth after an initial placement without any determination whether the penetration depth is sufficient, etc. It might be presumed sufficient from prior knowledge.

7. Because these inventions are distinct for the reasons given above and the search required for Group 1 is not required for Group 2, and vice-versa, restriction for examination purposes as indicated is proper.

8. A telephone call was made to Mr. Michael J. Striker on January 12, 1999 to request an oral election to the above restriction requirement, but did not result in an election being made.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (703) 305-4765.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7382.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4900.

1/15/99  
**Thomas P. Noland**  
**Primary Examiner**  
**Art Unit 2856**

*Thomas Noland*

Noland/dc  
January 13, 1999